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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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13 HEIDI LYNN CLEGHORN,

14 Plaintiff,

15 v.

16 CAROLYN W. COLVIN,
17 Acting Commissioner of Social
Security,

18 Defendant.
19

Case No. ED CV 15-295 MRW

ORDER VACATING DECISION OF
ADMINISTRATIVE LAW JUDGE

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21 **I. SUMMARY OF RULING**

22 Plaintiff Cleghorn challenges the denial of her application for Social
23 Security benefits. The administrative law judge found that Plaintiff was capable
24 of working and denied benefits.

25 The Court concludes that the ALJ failed to identify a specific and
26 legitimate reason supported by substantial evidence to reject the physical
27 function assessment of an examining orthopedic surgeon. As a result, the Court
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1 vacates the ALJ's decision and remands the matter to the agency for further
2 proceedings.

3 **II. PLAINTIFF'S CONDITIONS AND PROCEEDINGS BELOW**

4 Plaintiff applied for benefits based on various physical conditions.
5 Following an administrative hearing, the ALJ found that several of Plaintiff's
6 conditions (including her neck and shoulder problems) constituted "severe
7 impairments" as that term is used under federal regulations. (AR 34.)

8 The ALJ determined that Plaintiff had the residual functional capacity
9 (RFC) to perform light work with certain additional physical limitations.
10 (AR 36.) In reaching this finding, the ALJ rejected opinions from Plaintiff's
11 treating physician and a specialist who examined her. The ALJ also found that
12 Plaintiff was "not entirely credible" in describing her symptoms and limitations.
13 (AR 37.)

14 A vocational expert testified at the administrative hearing that an
15 individual with Plaintiff's RFC could perform several jobs in the local and
16 national economies. (AR 85-86.) From this, the ALJ concluded that Plaintiff
17 was not disabled and denied benefits. (AR 45-46.)

18 **III. STANDARD OF REVIEW**

19 Under 42 U.S.C. § 405(g), a district court may review the agency's
20 decision to deny benefits. An ALJ's findings and decision must be upheld if
21 they are supported by substantial evidence and are free of legal error. Hill v.
22 Astrue, 698 F.3d 1153, 1158 (9th Cir. 2012). Substantial evidence is proof in an
23 amount or of a nature that "a reasonable mind might accept as adequate to
24 support a conclusion." Burch v. Barnhart, 400 F.3d 676, 679 (9th Cir. 2005)

25 The Ninth Circuit "demand[s] that the agency set forth the reasoning
26 behind its decisions in a way that allows for meaningful review. A clear
27 statement of the agency's reasoning is necessary because we can affirm the
28 agency's decision to deny benefits only on the grounds invoked by the agency."

1 Brown-Hunter v. Colvin, ___ F.3d ___, 2015 WL 6684997 at *4 (9th Cir.
 2 Nov. 3, 2015) (amending previous decision); Bray v. Comm’r of Soc. Sec.
 3 Admin., 554 F.3d 1219, 1226 (9th Cir. 2009) (“meaningful review of an
 4 administrative decision requires access to the facts and reasons supporting that
 5 decision”).

6 **IV. DISCUSSION**

7 **A. Rejection of Examining Physician’s Opinion**

8 **1. Facts and ALJ Decision**

9 Plaintiff had an extensive history of neck, back, shoulder, and elbow/wrist
 10 problems. In connection with her disability benefits application, a Board-
 11 certified orthopedic surgeon (Dr. Styner) examined Plaintiff. (AR 641-59.)
 12 Dr. Styner conducted an extensive physical evaluation of Plaintiff, and reviewed
 13 a lengthy set of medical treatment records. Dr. Styner diagnosed Plaintiff with
 14 degenerative disc disease in her neck, inflammation in her shoulders, and other
 15 conditions. (AR 654.)

16 In addition to a lengthy written report, Dr. Styner completed a
 17 questionnaire in which he recommended fairly stringent work-related restrictions
 18 for Plaintiff. (AR 660-66.) The report and questionnaire recommended that
 19 Plaintiff be limited to jobs in which she: lifted little or no weight; had limited
 20 periods of time walking or standing; and had other movement-related restrictions
 21 for her neck. (AR 659.) Dr. Styner also believed that Plaintiff would likely miss
 22 more than three workdays a month. (AR 665.)

23 The ALJ gave “little weight” to Dr. Styner’s¹ opinions. (AR 43.) The
 24 ALJ initially noted that the consultant saw Plaintiff “only once in the preparation
 25 to [for?] the court date.” The ALJ pointed out that Dr. Styner’s opinions were

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 27 ¹ The written decision incorrectly refers to Dr. Styner as
 28 “Dr. Snyder.” (AR 43.) The ALJ spelled the physician’s name correctly
 elsewhere in the decision, and clearly reviewed the consultant’s report in its
 entirety. (AR 41.)

1 “inconsistent with the essentially normal findings of the physical and
2 neurological exams.” (*Id.*) As the only example, the ALJ concluded that
3 Plaintiff “demonstrated essentially normal range of motion in arms, wrists, and
4 fingers.” Further, the ALJ stated that the orthopedist’s opinions were
5 inconsistent with other, undefined medical evidence and the opinion of a non-
6 examining consultant whom the agency hired. (*Id.*)

7 That was a reference to Dr. Lorber, a physician who reviewed Plaintiff’s
8 medical records and testified as a non-examining expert at the hearing. (AR 36.)
9 Dr. Lorber concluded that Plaintiff required considerably fewer RFC restrictions,
10 including no limitation in her ability to turn her head or neck. (AR 67-68.) The
11 ALJ expressly gave Dr. Lorber’s opinion “significant weight,” although the ALJ
12 did not incorporate all of this physician’s recommendations into the final RFC.
13 (AR 36.)

14 **2. Relevant Law**

15 “In determining a claimant’s RFC, an ALJ must consider all relevant
16 evidence in the record.” *Robbins v. Social Sec. Admin.*, 466 F.3d 880, 883 (9th
17 Cir. 2006) (quotations omitted). If the ALJ rejects significant probative
18 evidence, the ALJ must explain why. *Vincent v. Heckler*, 739 F.2d 1393, 1395
19 (9th Cir. 1984). The ALJ satisfies this burden by detailing and summarizing the
20 facts and conflicting medical evidence and stating the ALJ’s interpretations and
21 findings. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008).

22 An ALJ generally gives the most weight to medical evidence from a
23 claimant’s treating physician, and progressively less weight to the opinions of
24 examining and nonexamining physicians. An ALJ may only reject a treating or
25 examining physician’s uncontradicted medical opinion based on “clear and
26 convincing reasons” supported by substantial evidence. *Turner v. Comm’r of*
27 *Soc. Sec.*, 613 F.3d 1217, 1222 (9th Cir. 2010). When a treating or examining
28 physician’s opinion is contradicted by another medical evaluation, the ALJ

1 “must provide specific and legitimate reasons supported by substantial evidence”
2 for rejecting that opinion. Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995)
3 (quotation omitted).

4 The question as to “whether the ‘clear and convincing’ or ‘specific and
5 legitimate’ standard applies” is a preliminary determination for a reviewing court
6 to make. Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006). Even
7 when contradicted, “a treating or examining physician’s opinion is still owed
8 deference and will often be entitled to the greatest weight” in disability
9 proceedings. Garrison v. Colvin, 759 F.3d 995, 1012 (9th Cir. 2014).

10 Further, it is error when an ALJ “rejects a medical opinion or assigns it
11 little weight while doing nothing more than ignoring it, asserting without
12 explanation that another medical opinion is more persuasive, or criticizing it with
13 boilerplate language that fails to offer a substantive basis for his conclusion.”
14 Garrison, 759 F.3d at 1012-13. A consulting examiner’s opinion is “entitled to
15 no less weight when the examination is procured by the claimant than when it is
16 obtained by” the agency itself. Lester, 81 F.3d at 832. In the absence of “other
17 evidence to undermine the credibility of a medical report, the purpose for which
18 the report was obtained does not provide a legitimate basis for rejecting it.”
19 Reddick v. Chater, 157 F.3d 715, 726 (9th Cir. 1998); Case v. Astrue, 425 F.
20 App’x 565, 566 (9th Cir. 2011) (“The ALJ erred by discounting the treating
21 physician’s RFC because it was completed ‘for obvious litigious purposes.’”).

22 **3. Analysis**

23 The ALJ rejected the recommendations of an examining physician
24 (Dr. Styner) regarding Plaintiff’s physical capabilities and work-related
25 limitations. A non-examining physician (Dr. Lorber) offered a contradictory
26 opinion based on his review of the medical evidence. The ALJ was required to
27 identify a specific and legitimate reason supported by substantial evidence to
28 reject the opinions of the examining specialist. Widmark, 454 F.3d at 1066.

1 But the Court finds the ALJ failed to do so. The first (and presumably
2 main) reason that the ALJ gave for rejecting Dr. Styner's opinions was because
3 the physician examined Plaintiff one time. In that way, evaluation of this Board-
4 certified orthopedic surgeon was identical to any consulting evaluation ordered
5 by the agency in advance of an administrative hearing. The ALJ failed to
6 explain why this circumstance was relevant to evaluating Plaintiff's conditions –
7 particularly in light of the ALJ's decision to credit a physician who never
8 examined Plaintiff over that of an examining doctor. Ample Ninth Circuit
9 authority makes clear that, without more, an ALJ may not properly reject such a
10 consulting examiner's opinion merely because a claimant obtained it in the
11 course of litigation. Lester, 81 F.3d at 832; Reddick, 157 F.3d at 726; Case, 425
12 F. App'x at 566.

13 The ALJ's remaining reasons for rejecting Dr. Styner's opinion were
14 neither specific nor legitimate enough to withstand appellate review. The ALJ
15 seized on Dr. Styner's candid observations that Plaintiff had "essentially normal"
16 range of motion in her arms, wrists, and fingers. (AR 43.) OK, but the crux of
17 the orthopedist's findings was that Plaintiff's neck was significantly impaired.
18 The medical exam report disclosed audible "cracking and crunching" when
19 Plaintiff moved her neck, tenderness, and considerably reduced range of motion.
20 (AR 643-51.) Also, Plaintiff's neck condition was the lead diagnosis in the
21 orthopedist's evaluation. (AR 654.)

22 The ALJ failed to satisfactorily explain how Plaintiff's normal use of her
23 fingers (or toes, or sense of smell, etc.) provided a legitimate reason to reject the
24 consultant's evaluation of a far more serious neck condition. Indeed, the ALJ's
25 focus on tangentially-related evidence strongly suggests that the examining
26 physician's opinion was not given the deference that it was owed. Garrison, 759
27 F.3d at 1012. Finally, the broad and empty statement that the Styner opinion was
28 inconsistent with other, undefined medical evidence or the contrary conclusion

1 of the paper-reviewing consultant was not sufficiently detailed to adequately
2 explain the agency's reasoning on appeal here. Tommasetti, 533 F.3d at 1041;
3 Bray, 554 F.3d at 1226.

4 The ALJ's error requires remand of the matter. Error in a social security
5 determination is subject to harmless error analysis. Ludwig v. Astrue, 681 F.3d
6 1047, 1054 (9th Cir. 2012). In the present case, the ALJ rejected proposed
7 limitations that, if included in Plaintiff's RFC, likely could have led to a different
8 result in the proceeding. The Court therefore remands the case on "an open
9 record" for further administrative proceedings. Burrell v. Colvin, 775 F.3d 1133,
10 1141 (9th Cir. 2014).

11 On remand, the parties may freely take up the somewhat closer question of
12 whether the ALJ properly evaluated and rejected the similar opinions of
13 Plaintiff's primary-care treating physician. Additionally, the Court expresses no
14 opinion as to whether the ALJ properly found Plaintiff not to be a believable
15 witness; either party may address this issue in the remanded, open proceeding.

16 **V. CONCLUSION**

17 The ALJ's decision is VACATED for the reasons stated above. The Court
18 REMANDS the case to the agency for further proceedings.

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20 Date: December 8, 2015

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22 HON. MICHAEL R. WILNER
23 UNITED STATES MAGISTRATE JUDGE
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